



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2013-0765; FRL-9905-66-Region-7]

Approval and Promulgation of Implementation Plans; State of Kansas; Annual Emissions Fee and Annual Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Kansas State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to the Kansas rule entitled "Annual Emissions Fee." These revisions align the State's reporting requirements with the Federal Air Emissions Reporting Requirements Rule (AERR).

DATES: This direct final rule will be effective on [Insert date 60 days after publication in the **Federal Register**], without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS after PUBLICATION IN THE **Federal Register**]. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R07-OAR-2013-0765, by one of the following methods:

1. www.regulations.gov. Follow the on-line instructions for submitting comments.
2. Email: kemp.lachala@epa.gov
3. Mail or Hand Delivery: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2013-0765. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends

that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551-7214, or by email at kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA taking?

I. What is being Addressed in this Document?

EPA is approving revisions to the Kansas SIP and Operating Permits Program submitted to EPA in a letter dated April 15, 2011. On December 17, 2008, EPA finalized the Air Emissions Reporting Requirements Rule (AERR). This rule outlines EPA's emission inventory reporting requirements. In the December 17, 2008 action, EPA consolidated, reduced and simplified the current requirements; added limited new requirements; provided additional flexibility to the states in the ways they collect and report emissions data; and accelerated the reporting of emissions data to EPA by state and local agencies. Revisions to the SIP amend KAR 28-19-202 Annual Emissions Fee to align the State's reporting requirements with EPA's reporting requirements. Specifically, the State moved the Emissions Inventory Questionnaire (EIQ) due date from June 1 to April 1; removed the minimum thresholds for assessing emissions fees for

class I stationary sources; and modified the State's late fee structure. The State increased the emissions fee in paragraph (c) from \$25 per ton to \$37 per ton. The Emissions Fees are an integral part of the Title V operating permit program, but not approved as part of the SIP. Kansas' amendments ensure that their reporting requirements align with EPA's AERR. EPA has conducted an analysis of the State's amendments and concluded that these do not adversely affect the stringency of the SIP.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements of SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part appendix V. In addition, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving the request to amend the Kansas SIP and operating permits program by approving the State's request to amend KAR 28-19-202 *Annual Emissions Fee* to align the State's rule with EPA's reporting requirements. Approval of these revisions will ensure consistency between state and Federally-approved rules. EPA has determined that these changes will not

relax the SIP or adversely impact air emissions.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional

enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE **Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 8, 2014.

Karl Brooks,
Regional Administrator,
Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R - Kansas

2. In § 52.870 the table in paragraph (c) is amended by adding new entry K.A.R. 28-19-202 in numerical order under subheading "General Provisions" to read as follows:

§ 52.870 Identification of plan.

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(c) * * *

EPA-Approved Kansas Regulations

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
* * * * *				
General Provisions				
* * * * *				
K.A.R. 28-19-202	Annual Emissions Fee	11/5/2010	[FEDERAL REGISTER OFFICE; insert date of FR publication and insert Federal Register page number where the document begins]	Paragraph (c), has not been approved as part of the SIP
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PART 70 - STATE OPERATING PERMIT PROGRAMS

3. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

4. Appendix A to Part 70 is amended by adding paragraph (f) under Kansas to read as follows:

Appendix A to Part 70 - Approval Status of State and Local Operating Permits Programs

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Kansas

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(f) The Kansas Department of Health and Environment submitted revisions to Kansas Administrative Record (KAR) 28-19-202 and 28-19-517 on April 15, 2011; approval of section (c) effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE **Federal Register**].

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